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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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RANDY YORDY, :
Plaintiff :
v. :
: CIVIL ACTION NO. 01-CV-206

(Judge Kane)

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SCOTT BROWN, individually and
in his official capacity as :
an employee and agent of the
Pennsylvania State Police; :
PAUL EVANKO, individually and
in his official capacity as :
an employee and agent of the
Pennsylvania State Police; :
BERON F. STEAGER, individually
and in his official capacity :
as an employee and agent of
the Pennsylvania State Police; :
BARRY L. BRINSER, individually
and in his official capacity :
as an employee and agent of the
Pennsylvania State Police, :
et al.,Defendants :
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25**FILED**
HARRISBURG, PA**FEB 10 2003****MARY E. D'ANDREA, CLERK**
Re
Deputy ClerkTRANSCRIPT OF PROCEEDINGS
JURY TRIAL
TESTIMONY OF VICKI RAE SMITHBefore: Hon. Yvette Kane, Judge
and a Jury
Date: January 6, 2003Place: Courtroom No. 4
Federal Building
Harrisburg, Pa.

COUNSEL PRESENT:

SPERO T. LAPPAS, Esquire
For - PlaintiffGREGORY R. NEUHAUSER, Esquire
For - DefendantsMonica L. Zamiska, RPR
Official Court Reporter

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INDEX TO WITNESS

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Direct Cross Redirect Recross

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For the Plaintiff:

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Vicki Rae Smith

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INDEX TO EXHIBIT

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Identified Admitted

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For the Plaintiff:

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P X 15A-J (photographs of Randy Yordy)

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1 THE COURT: Mr. Lappas, your next witness please.

2 MR. LAPPAS: Thank you, Your Honor. I call Vicki
3 Smith.

4 VICKI RAE SMITH, called as a witness, being duly
5 sworn or affirmed, testified as follows:

6 THE CLERK: Please be seated and state your full
7 name for the record.

8 THE WITNESS: Vicki Rae Smith.

9 DIRECT EXAMINATION

10 BY MR. LAPPAS:

11 Q Miss Smith, would you tell us where you live please.

12 A 9310 Mountain Road, Grantville, Pennsylvania.

13 Q Do you know Randy Yordy?

14 A Yes, I do.

15 Q How long have you known Randy?

16 A Seven or eight years.

17 Q What's your relationship with Randy Yordy?

18 A We lived together, and we were in business together.

19 Q Are you living together at the present time?

20 A No.

21 Q But you're still, shall we say, friends with Randy?

22 A Oh, yes.

23 Q Now I'm going to ask you some questions about the day
24 and evening of February 4, 1999. Where did you first see
25 Randy that day, say the evening hours?

1 A I first saw him when I went into -- I first saw him at
2 the Thoroughbred Bar.

3 Q Okay, and did you go there together or how did it come
4 to pass that you saw him there?

5 A I was on my way to feed horses that we had stabled in
6 Grantville, their property adjoins the bar property, and I
7 saw his truck, so I went in knowing he was there.

8 Q And did you talk to him?

9 A Yes.

10 Q How long did you stay with him in the Thoroughbred?

11 A It was a matter of minutes. I only asked when he was
12 coming home.

13 Q Who left first?

14 A Randy.

15 Q And when is the next time you saw Randy?

16 A When I was going down the road towards home, the truck
17 was pulled over by a cruiser, and when I pulled over and got
18 out and went back, that's when I saw Randy the second time.

19 Q All right, I'd like you to tell the members of the
20 Court and jury what happened right after you saw Randy the
21 second time on the evening of February 4, 1999?

22 A When the officer had him pulled over, that's what --

23 Q Right.

24 A Okay, I pulled over to see what the problem was, if it
25 had to do with the truck breaking down or if Randy had been

1 pulled over. Walked back to where the officer was standing
2 and asked him basically what the problem was, if it was -- at
3 that time I realized what he was doing was a sobriety test
4 with Randy. So he told me that I should stand by the bumper
5 of it would have been the truck.

6 Q Who told you that?

7 A The officer.

8 Q And do you know who, what officer that was?

9 A It was Officer Brown.

10 Q Okay, go ahead.

11 A Which I did. He continued with Randy, but I again
12 approached the officer simply to ask him what he would do, if
13 there would be a phone call, if I was to wait to take Randy
14 or what, and at that point he became upset with me and said
15 he wanted to administer a DUI test on me. I explained to him
16 -- he wanted me to stand on one foot, and I explained to him
17 that there was an old injury, I could not do this, but he
18 wanted me to do it anyway. So I tried, but I couldn't do it.
19 And while I tried I think Randy moved in to not to help me do
20 the test but knowing I would tip, I would not be able to hold
21 the balance.

22 The officer then said he would do another test, and he
23 had a cylindrical object like a pen, and he took it back and
24 forth in front of my eyes, and at the point when he was
25 through with that, I think I said I passed, and he turned

1 from me and went back to Randy at that point.

2 I then think I approached him and simply said that I
3 was going home because I didn't know what to do anymore. And
4 I started walking back to my car, but then I realized I still
5 didn't know what about the truck, what about Randy, so I
6 turned around and walked back to where they had been
7 standing. And at that point all I saw was the officer had
8 one of Randy's arms and was pulling him toward -- there is a
9 field, towards the field. I didn't really understand what
10 went on. It appeared to me that both of them tripped, I
11 don't know, but the next thing they were out of the
12 headlights and on the ground, and all I saw were feet. One's
13 feet on top of the other.

14 Q Okay, and then what?

15 A I don't know if I screamed or not. I know I was scared
16 because I didn't understand. I went home.

17 Q Now at any time during this incident at the side of the
18 road did you take any aggressive or violent actions towards
19 Mr. Brown?

20 A No, sir.

21 Q Specifically did you ever try to kick him?

22 A Absolutely not, no, sir. No, sir.

23 Q Did you ever try to interfere with his investigation or
24 interfere with what was going on between him and Randy?

25 A No. No.

1 Q All right, then you went home?

2 A Yes.

3 Q Did anybody try to stop you from going home?

4 A No.

5 Q What happened when you got home?

6 A I think I had the TV on, I was on the sofa, and I
7 didn't know what to do. I thought -- I didn't know if I
8 should call someone and say about getting Randy's truck
9 because I didn't know what was going to happen, so I waited.
10 I sat on the sofa, and at that time I think I probably drank
11 a beer or maybe a beer and a half, I'm not sure, I was
12 sitting waiting. And I was exhausted, I had been up since
13 three in the morning, and I fell asleep.

14 Q What kind of work had you been doing at that time?

15 A That day I had been cleaning out an abandoned apartment
16 building.

17 Q Go on, so you're home and you lay down on the couch.

18 A And I fell asleep.

19 Q What's the next thing you remember?

20 A There is a door that enters the home, a laundry room
21 door, I heard people knocking and calling at the laundry room
22 door. So I got up and answered the door, and there were two
23 officers in the laundry room. And one of them said, "Can you
24 come outside for a minute?", something to that effect, and I
25 said sure. And he said, "Put your boots on." I have a

1 habit, I take my shoes off when I come in my house. I
2 assumed they brought Randy home, I'd have went out without
3 shoes on at that point, but he said, "Put your boots on." So
4 I hesitated, and the one officer, not in an unkind way, took
5 my arm like for balance and the other officer slipped one of
6 my boots on, then he slipped my other boot on.

7 Q Now let me interrupt you for a minute. Are we inside
8 your home now?

9 A In the laundry room, in the laundry room.

10 Q Okay.

11 A And then I asked, "Do I need my coat?", and they said
12 no. And when I stepped out onto the patio, the officer
13 stepped out behind me and put handcuffs on me.

14 Q Now do you remember which officer that was?

15 A Who the officers were that were in the laundry room?

16 Q Right, right.

17 A I think it was Officer Brinser and Steager, I think.

18 Q Now after they put the handcuffs on you what happened
19 next?

20 A They walked me across the patio and up around the back
21 of the home, and I know I kept repeating, "What did I do?
22 What did I do?", but they didn't respond. They walked me
23 down the driveway towards the road, and the driveway is very
24 ruddy, and at one point I went to my knee. I slipped and
25 went to my knee. And the one officer said to me something,

1 "See, you can't even stand up," and his tone was wholly
2 different than it had been in the laundry room, so it just
3 something wasn't --

4 Q Different in what way?

5 A Well, they were very courteous in the laundry room, and
6 then the tone of, "See, you can't even stand up," was almost
7 like sarcastic, I didn't -- it just -- it frightened me, the
8 change in tone.

9 About halfway down the drive I could see that Randy's
10 truck was on the right-hand side of the drive as though it
11 was being pulled up the drive but it was stopped. And there
12 were police cars every where on the road.

13 They took me to the bottom of the driveway, and in a
14 cruiser that was pulled towards the drive, a little to the
15 left of the drive, they put -- the one officer put me in the
16 back seat of that cruiser. And for some reason it was backed
17 up one or two feet, just very briefly backed up, and then
18 that officer got out again.

19 Q You mean after you got in the vehicle?

20 A After I was in the back seat.

21 Q Somebody backed it up a foot or two. Okay, please
22 continue.

23 A Um, the cruiser I was in -- there was also a cruiser on
24 the other side of the drive facing that cruiser. There were
25 about three cruisers kind of all -- with the lights coming to

1 one area right in front of the cruiser where I was. And what
2 I realized was an officer stepped into the light and punched
3 down at the ground in front of the cruiser I was in. I could
4 not see what he was punching because of the hood of the
5 cruiser. And kind of stepped back out and then an officer
6 from another side stepped in and did the same thing, just
7 punched at the ground, and this went on. One officer
8 actually coming in from the left had one glove on, and he
9 actually was putting the glove on I use the word very
10 methodically as he stepped in, and then he punched to the
11 ground, and that's when I knew Randy was there.

12 Q How did you know Randy was there?

13 A The truck was there, and I couldn't see him, and they
14 were punching something.

15 Q When is the next time -- well, strike that. How long
16 did this punching go on?

17 A In time I can't tell you. It --

18 Q Do you know how many punches were landed?

19 A I counted to nine. For some reason I thought I should
20 count this. I counted to nine, and then I couldn't watch
21 anymore, I just looked down.

22 Q Then what happened after that?

23 A Well, after a time I looked back up, and they stood
24 Randy up in front of the car.

25 Q So you actually saw them stand him up. So there is no

1 doubt about the fact that he was the one who was on the
2 ground being punched?

3 A Oh, no, no, no.

4 Q You saw him being picked up?

5 A Uh-huh.

6 Q Go on, and then what?

7 A There was an officer on either side of him, and they
8 had their hands under his arm, well, as far as that, but they
9 had their arms under literally practically supporting him
10 holding him up.

11 Q What was Randy's condition at this point?

12 A He was being supported. It appeared to me it was more
13 or less hanging on their arms. He wasn't -- his head was
14 hanging on his chest. Blood was just pouring, and every time
15 the officers on either side if they would say something to
16 someone or for whatever reason if they would shift, his head
17 would just roll to the other side, and you could just see the
18 blood going in the creases in his neck. He never lifted his
19 head. I don't know if he could have or not, but he never
20 lifted his head.

21 O All right, what happened after that?

22 A The two officers walked Randy it would be from the
23 front of the car to the left out of my view. An officer then
24 approached the car I was in. Well, what I had done was I
25 never had handcuffs on, and they hurt. So when the officer

1 placed me in the car, I slipped them off and laid them on my
2 lap. So -- and I thought, "Well, if an officer comes back,
3 I'll just put them back on." Well, the officer came from the
4 rear of his car after they moved Randy off and opened the
5 door, and I didn't know what -- so I just handed him the
6 handcuffs. I don't know which officer it was, all he said
7 was, "You have small wrists." Motioned me to get out of the
8 car, put them back on, moved me into another car, and then
9 they took me to what they refer to as headquarters, which I
10 now know is on Elmerton.

11 Q When is the next time you saw Randy Yordy?

12 A Where you -- um, where you go in front of the
13 magistrate, that's -- I'm not sure what it was called.

14 Q Was it at District Justice Bridges' office?

15 A Yes.

16 Q You were charged with something as a result of some
17 allegations made against you. Is that correct?

18 A Yes.

19 Q What were you charged with?

20 A There were two kinds of assault, I think one was simple
21 assault, one was aggravated assault. I think one was
22 obstructing justice. There were quite a few, I'm not sure
23 what they all were.

24 Q Did you plead guilty to any charges at all?

25 A They -- uh-huh, yes.

1 Q Which ones?

2 A They changed them to resisting arrest and obstruction
3 of justice. I think they were the two.

4 Q Why did you plead guilty to those charges?

5 A For one thing I was told that people will normally
6 believe a police officer over a civilian.

7 Q Who told you that?

8 A The attorney. Until that day I would have, so that was
9 easy to believe.

10 Q Until that day did you say?

11 A I would have believed a police officer as a rule over a
12 civilian. They also said that if I would plead guilty -- if
13 I didn't plead guilty and pushed it and it went to court,
14 that Randy could get 20 years in prison. Again that the
15 officers would be believed more so than the average person.
16 And then when I still resisted, the third reason was I have
17 pets at home, and I wouldn't have anyone to care for them if
18 I really did go to jail. So the third thing the attorney
19 said to me was that, "If you pursue this, who is going to
20 feed the animals if you're gone?" And that was kind of -- I
21 just pled guilty just to be done with it.

22 Q Did you receive probation or a jail sentence?

23 A Probation one year.

24 Q When Trooper Steager and Trooper Brinser were at your
25 home on the evening of February 4, 1999, did you take any

1 aggressive or violent conduct towards either one of them?

2 A No, not at all.

3 Q Did you jump on anybody's back or try to pull them in
4 any direction or do anything violent or aggressive
5 whatsoever?

6 A No.

7 Q Now in February of '99 you were living with Randy
8 Yordy. Correct?

9 A Yes.

10 Q When he -- he's testified that he spent a couple days
11 in jail before bail was posted and then was convalescing for
12 a period of time, he was recovering for a period of time. Do
13 you remember that?

14 A Yes.

15 Q How can you -- how would you describe for us his
16 condition after he returned home from first the events of
17 February 4, then the hospital, then the Dauphin County jail?
18 When he got home, how was he?

19 A Excuse me, he was -- he was still horribly swollen with
20 a broken arm. He was in pain all the time. I mean, he was
21 eating Advil or whatever, he was in pain all the time. He
22 couldn't work. He couldn't do anything comfortably, sit or
23 lay or whatever for I think he was in the cast for six to
24 eight weeks for his arm, and then even after that because of
25 the kind of work he does it was difficult with the arm to do

1 work, a full day's work.

2 Q How did you know he was in pain?

3 A He's not a complainer, but when you go to take a step
4 or something, you stop suddenly or you reach for your arm or
5 you -- and at times he did say he aches all over, that he
6 felt like an old man.

7 Q I want you to open up there should be a binder right in
8 front of you marked Binder 3, I want you to open it up to the
9 tab for No. 15 please. Now Exhibit 15A through I think J is
10 a series of photographs. I simply ask that you look at them
11 and then tell us whether or not they accurately depict the
12 way Randy Yordy looked after February 4, 1999?

13 A Yeah, they do. That's what he looked like.

14 MR. LAPPAS: Those are my only questions, Your
15 Honor. Thank you.

16 THE COURT: All right, thank you. Mr. Neuhauser.

17 CROSS EXAMINATION

18 BY MR. NEUHAUSER:

19 Q Miss Smith, you and Mr. Yordy have been a couple since
20 before this incident in 1999. Right?

21 A Yes.

22 Q I mean, you lived together before then, and you were a
23 couple during the time of this incident, and you're still a
24 couple. Right?

25 A Yes.

1 Q Now when you stopped along side the road to see what
2 was happening with Randy the night of February 4, 1999, you
3 were concerned for his well-being. Right?

4 A Well, yes, but it was a question did the truck break
5 down or had Randy been stopped.

6 Q Were you concerned at all about the truck and the tools
7 that were in the truck?

8 A Yes, if the truck broke down, we would take them out.

9 Q And that was because there was no lock on the truck.
10 Right?

11 A Right.

12 Q And you were concerned that if the truck stayed there
13 without a lock on it, the tools may be taken. Right?

14 A Right.

15 Q That was one of the reasons you stopped?

16 A Right.

17 Q Now I think you testified in response to questions from
18 Mr. Lappas that you did not engage in any resisting arrest
19 behavior the night of February 4, 1999. Correct?

20 A No, sir.

21 Q Nonetheless you pled guilty to resisting arrest.
22 Correct?

23 A Yes.

24 Q And I think you told us that the reason you did that
25 was that your attorney advised you to plead guilty because

1 you wouldn't be believed over a police officer. Is that
2 right?

3 A Right.

4 Q And you also wanted --

5 A That's one reason.

6 Q Right, and you also wanted to help out Randy, right,
7 with the charges against him?

8 A Right, they also -- right.

9 Q And the third reason you pled guilty was that you had
10 pets at home, and that you were concerned that no one would
11 be able to take care of them if you weren't around. Is that
12 right?

13 A Right.

14 Q Those were the three reasons you pled guilty?

15 A Right.

16 Q I think you testified that Trooper Brown became upset
17 with you along side the road when you stopped?

18 A Yes.

19 Q You can understand why he may become a little upset
20 with you, can't you, because of your going up to him and
21 touching him and talking to him while he's trying to
22 administer the sobriety test?

23 A In retrospect I tried to justify him that way.

24 Q Well, you can understand why he'd be a little upset
25 when he's trying to do one thing with Mr. Yordy --

1 A To a certain degree, yes, yes.

2 Q -- and you're touching him and talking to him over here
3 on his left. Right?

4 A Yes.

5 Q And you have seen the video of the incident. Right?

6 A Yes, uh-huh.

7 Q There is no dispute that you went up to him and touched
8 the trooper and were talking to him during the time that he
9 was trying to explain the sobriety test?

10 A Oh, no, I did, I touched him.

11 Q And you were talking to the trooper at the time.
12 Right?

13 A Yes.

14 Q When you're standing along side the truck and watching
15 Trooper Brown and Mr. Yordy on the ground, did you hear them
16 say anything to each other?

17 A No.

18 Q You couldn't hear anything?

19 A I didn't hear anything.

20 Q But you do know that Randy was face down on Trooper
21 Brown's chest. Right?

22 A That's not the way it appeared to me. Although I
23 couldn't see his face, I saw the feet.

24 Q You didn't see Randy on top of Trooper Brown and
25 Trooper Brown on the bottom?

1 A But face up.

2 Q Okay, Trooper Brown was face up, and Mr. Yordy was on
3 top of Trooper Brown?

4 A Face up, I think, I saw the feet. The feet were --

5 Q But, in any event, Mr. Yordy was on top of Trooper
6 Brown when they were on the ground?

7 A Right.

8 Q Was that right?

9 A Right.

10 Q Okay, and at that point you just stayed for a few
11 seconds or a couple of minutes and then left?

12 A Yes.

13 Q They were still on the ground when you left?

14 A Yes.

15 Q And you drove straight home. Right?

16 A Yes.

17 Q You didn't call anybody along the way, you didn't stop,
18 you just drove home?

19 A I didn't have a cell phone.

20 Q But my question is you didn't stop --

21 A No.

22 Q -- or call anybody, --

23 A No.

24 Q -- you went straight home?

25 A Yes.

1 Q And when you got home, you just sat there and you
2 waited?

3 A Right.

4 Q You didn't call anybody at that point either, did you?

5 A I know I thought about calling concerning the truck,
6 but, no, I don't think so.

7 Q Regardless of what you thought of doing, you didn't
8 call anybody, did you?

9 A No, I don't think so.

10 Q You fell asleep on the sofa. Right?

11 A Yes.

12 Q And I think you testified you may have had a beer when
13 you got home. Right?

14 A Right.

15 Q You had had one at home before you went to the
16 Thoroughbred Bar, didn't you?

17 A I think so but I'm not sure.

18 Q But it's a possibility that you did. Right?

19 A Yes.

20 Q And you're saying that you didn't have any alcohol
21 while you were at the bar?

22 A No.

23 Q So the only beers that you had were possibly one at
24 home before you went to the bar and then another one when you
25 got home after you left the traffic stop. Was that right?

1 A Right. Right.

2 Q You said you fell asleep on the sofa, and you didn't
3 see Mr. Yordy again until he's down at the end of the
4 driveway, and you're sitting in the police cruiser. Is that
5 right?

6 A Right.

7 Q And it's your testimony that when Trooper Brinser and
8 Trooper Steager came to your back door there was no physical
9 confrontation between you and them out on that patio?

10 A Oh, not at all.

11 Q There is a flagstone patio out back. Right?

12 A Yes.

13 Q But nothing happened between you and them out there on
14 that patio?

15 A No.

16 Q Now this thing that you saw down at the bottom of the
17 driveway, I just want to see if I understand this. This I
18 think you testified that there were several troopers' cars
19 parked with their headlights shining towards one particular
20 area?

21 A Yes, yes, because of the way they were parked, pulled
22 in.

23 Q And that's down at the bottom of your driveway?

24 A Right.

25 Q Along the road that runs past your house. Right?

1 A Right.

2 Q There are neighbors across the street, right, kind of
3 diagonally, --

4 A Right.

5 Q -- kind of diagonally from the end of your driveway?

6 A Catty-corner, uh-huh.

7 Q And the cruiser or the trooper's car that you were
8 sitting in was parked where in relation to these other cars
9 that are at the bottom of the driveway?

10 A It was right before the entrance to the driveway if
11 you're traveling west.

12 Q Okay, so you're sitting in a trooper's car at the
13 bottom of your driveway while other troopers' cars are around
14 parked with their headlights on shining towards this area in
15 front of the car that you're sitting in?

16 A There was one pulled in on the other side facing.
17 There were cars lined up behind us, and I think there was one
18 across the road.

19 Q Well, how many cars were there that were parked with
20 their headlights shining towards this area --

21 A At least two.

22 Q -- in front of your car?

23 A At least two.

24 Q Was there a light on in your car, the car you were
25 sitting in?

1 A Inside?

2 Q Yes, you know, one of those dome lights.

3 A No.

4 Q No?

5 A I don't think -- no, I don't think so.

6 Q Was there a cage, one of those mesh cages in front of
7 you in the car that you were sitting in?

8 A I think there was because I know at first I tried to
9 sit front further on the seat because I couldn't see what was
10 going on, and I know I couldn't get front far enough to see
11 any more than what I was seeing, so I think there was, but --

12 Q Okay, so you're in the back seat of the car with
13 possibly a mesh cage in front of you and no light on in the
14 vehicle. Was that right?

15 A No, there was no light on. The cage I'm not sure
16 about.

17 Q Okay, when you saw Mr. Yordy and Trooper Brown back at
18 the traffic stop, when you saw them go down to the ground, it
19 appeared to you that they had tripped and fallen. Right?

20 A That was what it looked like.

21 Q Did you see any punches being thrown when you were
22 watching Trooper Brown and Mr. Yordy off to the side of his
23 truck on the ground?

24 A No, I could only see feet.

25 Q You're standing at the rear bumper of the truck looking

1 over at them on the ground, and all you see is feet?

2 A Feet and just partway up a leg. They were out of the
3 headlights.

4 Q Were you concerned for Mr. Yordy at that point?

5 A In what -- how?

6 Q Were you concerned for Mr. Yordy's condition or
7 well-being at that point?

8 A I was concerned because I had never seen anything like
9 that.

10 Q So that's a, yes, you were concerned about his
11 condition and well-being?

12 A Yes. By the same token he was with a police officer,
13 so I felt safe at that point going home.

14 MR. NEUHAUSER: I have no further questions, Your
15 Honor.

16 THE COURT: Thank you.

17 MR. LAPPAS: No redirect, Your Honor.

18 THE COURT: All right, thank you very much. You
19 may step down.

20 (The testimony of Vicki Rae Smith concluded.)

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1 I hereby certify that the proceedings and evidence
2 of the court are contained fully and accurately in the notes
3 taken by me on the testimony of Vicki Rae Smith from the jury
4 trial of the within cause and that this is a correct
5 transcript of the same.

6 Monica L. Zamiska

7 Monica L. Zamiska, RPR

8 Official Court Reporter

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